

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 411 of 1997

in

SPECIAL CIVIL APPLICATION No 6472 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.THAKKER and

Hon'ble MR.JUSTICE S.D.PANDIT

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1. Whether Reporters of Local Papers may be allowed
to see the judgements? No.

2. To be referred to the Reporter or not? No.

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3. Whether Their Lordships wish to see the fair copy
of the judgement? No.

4. Whether this case involves a substantial question
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder? No.

5. Whether it is to be circulated to the Civil Judge?
No.

PADMASINH RAMSINH BODANA

Versus

DISTRICT EDUCATION OFFICER

Appearance:

PARTY-IN-PERSON for Petitioner

SERVED for Respondent No. 3

CORAM : MR.JUSTICE C.K.THAKKER and

MR.JUSTICE S.D.PANDIT

Date of decision: 15/09/97

ORAL JUDGEMENT(Per Thakker.J)

This is an appeal filed against an order passed by the learned Single Judge dismissing Special Civil Application No. 6467 of 1996 on March 14, 1997.

2. The appellant is the original petitioner. He approached this Court for an appropriate writ, direction or order directing Panthawada High School to permit him to work as Secondary Teacher in that school as per an order passed by the District Education Officer, Banaskantha, Palanpur on July 22, 1996 at Annexure.B to the petition. The learned single Judge after considering the facts and circumstances of the case held that said order was passed by the District Education Officer in the light of certain observations made by the learned single Judge in an earlier petition being Special Civil Application No. 10473 of 1995 which was filed by the present appellant in which Panthawada High School was not made a party. It was also observed by the learned single Judge that the appellant wanted to be declared as surplus. When he was not declared surplus, he approached Gujarat Secondary Education Board. In the circumstances, the learned Single Judge was of the view that such relief as prayed for could not be granted and dismissed the petition. In Letters Patent Appeal notices were issued to the Respondents and parties appeared.

2. We have heard Mr Bodana, appellant party in person. He submitted that an order was passed by the District Education Officer and hence, it was obligatory on the part of the respondent school to comply with the said order. He also submitted that said order was not only in pursuance of the observations made by the learned single Judge in Special Civil Application No.10473 of 1995 referred to above but also in consonance with a Resolution issued by the Government of Gujarat, Education Department dated May 26,1986. He submitted that the Letters Patent Appeal deserves to be allowed and the order passed by the learned single Judge deserves to be

quashed and set aside.

3. Mr. Pujara learned counsel for the contesting respondents nos. 3 and 4 submitted that in the earlier petition, Panthanwada School was not joined as party respondent. An order was passed behind the back of the school and only because of the observations made by the learned single Judge, that the District Education Officer passed an order. We asked Mr. Pujara as to what has happened to that order. He stated that the school has challenged that order by filing Special Civil Application No.. 6399 of 1997 wherein Rule is issued and interim relief against the order passed by the District Education Officer is also granted and the matter is pending for final hearing. Regarding the Resolution dated May 26, 1986 he stated that subsequently, the Government has issued another Resolution on MAY 21, 1994 and there is no provision relating to surplus teachers as mentioned in earlier Resolution. Thus, the provision regarding surplus teachers will stand cancelled.

4. We are not expressing any opinion one way or the other particularly in view of the fact that Special Civil Application No. 6399 of 1997 is admitted and pending for final hearing. So far as the action of respondents is concerned, in the facts and circumstances of the case, it cannot be said to be contrary to law. There is no infirmity in the order passed by the learned single Judge which requires interference by us. Hence, this Letters Patent Appeal deserves to be dismissed and the same is accordingly dismissed. No costs.

We may clarify that whatever observations have been made in this order are only for the purpose of deciding the present appeal and we may not be understood to have said anything on merits.

(C.K.Thakker.J)

(S.D.Pandit.J)